

90-01

Valley Wood
31332
1317-00013

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12 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
13 REGION 9

14 In the Matter of :

15 Valley Wood Preserving, Inc.
16 2237 South Golden State Boulevard
17 Turlock, California

18 Valley Wood Preserving, Inc.

19 Respondent

Order No. 90-01

20 Proceeding under Sections 104, 106 and
21 122 of the Comprehensive Environmental
22 Response, Compensation and Liability
23 Act of 1980, as amended by the Superfund
24 Amendments and Reauthorization Act of
25 1986, (42 U.S.C. §§ 9604, 9606 and 9622)

26 ADMINISTRATIVE CONSENT ORDER
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1 I. INTRODUCTION AND JURISDICTION

2 A. This Administrative Order on Consent ("Order") is
3 entered into voluntarily by the United States Environmental
4 Protection Agency ("EPA") and Valley Wood Preserving, Inc.
5 ("Respondent"). .

6 B. This Order is issued pursuant to the Comprehensive En-
7 vironmental Response, Compensation and Liability Act of 1980, 42
8 U.S.C. §§ 9601, et seq., as amended by the Superfund Amendments
9 and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat.
10 1613 (1986) ("CERCLA"), by authority delegated to the Ad-
11 ministrator of the United States Environmental Protection Agency
12 ("EPA"), and redelegated to the EPA Regions, and requires Respon-
13 dent to undertake and complete certain emergency removal actions,
14 including the removal and treatment of groundwater, prevention of
15 migration of hazardous substances in groundwater, and prevention
16 of exposure to groundwater containing hazardous substances.

17 C. The Director of the Hazardous Waste Management Division,
18 EPA Region 9 ("the Director"), has determined that there is an
19 imminent and substantial endangerment to the public health, wel-
20 fare and the environment because of the release and threatened
21 release of hazardous substances at and from the Valley Wood
22 Preserving, Inc. Site, 2237 South Golden State Boulevard, Tur-
23 lock, California (the "Site" or the "Facility"). In entering
24 into this Order, the mutual objective of EPA and Respondent is to
25 conduct the removal activities described herein to protect public
26 health and welfare and the environment.

27 D. Respondent agrees to undertake all actions required by
28 this Order. Respondent agrees to all of the terms and conditions

1 of this Order. Respondent agrees that in any action by EPA to
2 enforce this Order, Respondent will not contest: (1) the
3 authority or jurisdiction of the Director to issue this Order,
4 nor (2) any of the terms or conditions of this Order.

5 E. EPA has designated a Project Coordinator for the Site
6 who has the powers vested in the On-Scene-Coordinator ("OSC"),
7 pursuant to 40 C.F.R. Part 300, published at 50 Fed. Reg. 47912
8 (November 20, 1985).

9 F. By entering into this Order, Respondent does not admit
10 the truth of any statements contained in the Findings of Fact or
11 Conclusions of Law, or the Determinations made therein, nor does
12 Respondent admit any liability or admit any issues of law or fact
13 or any responsibility for the alleged release or threatened
14 release of any hazardous substances into the environment. Noth-
15 ing contained in this paragraph shall relieve Respondent from its
16 obligation to perform the work and to do those things as provided
17 for in this Order.

18 G. This Order is not intended to be used or to be admis-
19 sible in any proceeding brought by any third party in relation-
20 ship to the Site.

21 22 II. FINDINGS OF FACT

23 Background

24 A. The Valley Wood Preserving Site occupies approximately
25 14.4 acres along South Golden Gate Boulevard in Turlock, Califor-
26 nia. The Site lies within a residential and agricultural region.

27 B. Valley Wood Preserving, Inc. conducted operations at the
28 Site from 1973 until 1983. The company preserved lumber using an

1 aqueous solution containing two to four percent chromated-
2 copper-arsenate ("Cr-As-Cu" or "CCA solution"). The wood
3 preserving chemicals were stored and mixed on-Site in three
4 above-ground storage tanks.

5 C. Lumber, in loads of up to 100,000 pounds, was placed
6 onto a rail-mounted treatment train and pushed into one of four
7 pressure-treatment cylinders. The cylinders or retorts were
8 evacuated by vacuum and filled with the CCA solution to impreg-
9 nate the lumber. The treatment train would then exit the
10 cylinder, and the wood would be unloaded and allowed to drip dry
11 on paved and, at times, unpaved areas.

12 D. In 1979, the California Central Valley Regional Water
13 Quality Control Board (CCVRWQCB) identified toxic wood treating
14 chemicals (Cr,As,Cu) within an on-Site storage pond, within hold-
15 ing tanks, and within on-Site and off-Site soils. In addition,
16 groundwater contamination was detected within the shallow uncon-
17 fined aquifer at the Site.

18 E. After detecting groundwater contamination at the Site in
19 November of 1979, the CCVRWQCB issued a clean-up order to Respon-
20 dent. In 1980, the CCVRWQCB obtained a preliminary injunction
21 ordering Respondent to undertake certain response actions at the
22 Site. In the early 1980's, Respondent hired CH2M Hill to conduct
23 soil and groundwater sampling at the Site and attempted to imple-
24 ment three types of remedial technologies to treat extracted
25 groundwater: evaporation; chemical treatment; and electrochemical
26 treatment. However, Respondent ceased remedial efforts in 1983,
27 due to alleged financial difficulties.

28 F. In March of 1987, the California Department of Health

1 Services (CDHS), Toxic Substances Control Division, issued a
2 Remedial Action Order to Respondent requiring it to conduct a
3 remedial investigation and feasibility study (RI/FS) and develop
4 a Remedial Action Plan (RAP). In response to the State Remedial
5 Action Order, Respondent contracted with Geosystems of Irvine,
6 California to conduct an RI/FS at the Site.

7 G. In January of 1989, Respondent submitted to CDHS a draft
8 remedial investigation report prepared by Geosystems. The draft
9 remedial investigation report concluded that the contaminant
10 plume extends over 1600 feet off-Site, is migrating further
11 downgradient, and poses a substantial threat to neighboring
12 domestic wells. In addition, the report indicated the need for
13 additional studies to fully assess the hydrogeologic and geologic
14 conditions at the Site.

15 H. In July of 1989, Respondent submitted an additional work
16 plan to continue the remedial investigation. Monthly groundwater
17 sampling data collected by Geosystems since July 1989 shows that
18 high concentrations of chromium are now present in three of the
19 neighboring domestic drinking-water wells, and that significant
20 levels of arsenic are now present in five of the neighboring
21 wells.

22 I. Under the provisions of Section 105 of CERCLA, 42 U.S.C.
23 § 9605, the Site was placed on EPA's National Priorities List on
24 March 3, 1989. See 54 Fed. Reg. 13296. Respondent received
25 notice of its CERCLA liability in a letter from EPA dated August
26 1, 1989.

27 **Endangerment**

28 J. The primary contaminant in the groundwater at the Site

1 is chromium, including both hexavalent and trivalent chromium.
2 The State of California Maximum Contaminant Level ("MCL") for to-
3 tal chromium in groundwater has been set at .05 ppm. Groundwater
4 concentrations of hexavalent and trivalent chromium at the Site
5 range from .05 ppm to 20 ppm. The most recent samples taken from
6 the neighboring domestic wells reveal total chromium concentra-
7 tions ranging from .0103 ppm to .0142 ppm. Exposure to chromium
8 compounds has been linked to an increased incidence of lung can-
9 cer and other forms of cancer in humans. Chronic exposure can
10 result in severe liver and kidney damage, and skin ulcers.

11 K. Arsenic has also been found in groundwater samples taken
12 on-Site in concentrations ranging from .01 ppm to .28 ppm and in
13 groundwater samples taken at neighboring domestic wells in con-
14 centrations ranging from .0059 ppm to .0075 ppm. The MCL for ar-
15 senic in groundwater is .05 ppm. Arsenic exposure has been
16 linked to increased incidence of human lung and skin cancer.
17 Chronic arsenic exposure can produce malaise, fatigue, changes in
18 skin pigmentation, gastrointestinal disturbance and liver damage.
19 Acute exposures to high concentrations of arsenic can be fatal.

20 Population at Risk

21 L. Recent groundwater sampling data reveals that the
22 contaminant plume has migrated off-Site and impacted several
23 neighboring domestic drinking-water wells. Persons whose wells
24 are impacted by the contaminant plume are at risk of ingesting
25 water with dangerously high concentrations of both chromium and
26 arsenic and therefore may be exposed to the health risks
27 described in Paragraphs J and K above. Without the immediate im-
28 plementation of emergency measures, there will be an increase in

1 the levels of chromium and arsenic in the neighboring drinking-
2 water wells in which concentrations of those contaminants have
3 already been found. In addition, the contaminant plume may
4 migrate even further off-Site and contaminate additional domestic
5 drinking-water supplies.

6 Responsible Parties

7 M. Respondent Valley Wood Preserving, Inc. has been con-
8 ducting its operations on the Site since 1973 and is currently
9 the legal owner of the Site. Valley Wood Preserving, Inc. is
10 also therefore an owner and operator of the Site, as defined in
11 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

12 M. Harold and Joyce Logsdon were the owners of the Site
13 from the inception of Valley Wood Preserving, Inc.'s operations
14 on the Site in 1973 until they transferred legal ownership of the
15 facility to Valley Wood Preserving, Inc. several years later.
16 Harold and Joyce Logsdon are therefore owners and operators of
17 the Site, as defined in Section 107(a) of CERCLA, 42 U.S.C. §
18 9607(a). Mr. and Mrs. Logsdon are also shareholders in Valley
19 Wood Preserving, Inc. Mr. and Mrs. Logsdon are not Respondents
20 to this Order.

21

22 III. CONCLUSIONS OF LAW

23 A. Respondent is a "person" as defined in Section 101(21)
24 of CERCLA, 42 U.S.C. § 9601(21).

25 B. The property located at the Valley Wood Preserving, Inc.
26 Site, 2237 South Golden State Boulevard, Turlock, California is a
27 "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §
28 9601(9).

1 C. Chromium compounds and arsenic are "hazardous sub-
2 stances" as that term is defined in Section 101(14) of CERCLA, 42
3 U.S.C. § 9601(14).

4 D. There have been "releases" and "threats of releases" of
5 hazardous substances into the environment, as defined in Section
6 101(22) of CERCLA, 42 U.S.C. § 9601(22), including the presence
7 of hazardous substances within the groundwater on-Site and the
8 groundwater migrating from the Site.

9 E. Respondent is a "responsible party" as defined in Sec-
10 tion 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
11

12 IV. DETERMINATIONS

13 Based on the Findings of Fact and Conclusions of Law, the
14 Director, Hazardous Waste Management Division, EPA Region 9, has
15 made the following determinations:

16 A. The release or threatened release of hazardous sub-
17 stances, pollutants or contaminants from the Site may present an
18 imminent and substantial endangerment to the public health, wel-
19 fare, and the environment.

20 B. In order to prevent or mitigate immediate and sig-
21 nificant risk of harm to human health and the environment, it is
22 necessary that actions be taken immediately to contain and
23 prevent the release and potential release of hazardous sub-
24 stances, pollutants or contaminants from the Site.

25 C. The removal measures required by this Order, if imple-
26 mented in accordance with this Order, constitute a removal action
27 consistent with the National Contingency Plan ("NCP"), 40 Code of
28 Federal Regulations, Part 300, and are consistent with the long-

1 term remediation of the facility.

2
3 **V. WORK TO BE PERFORMED**

4 **A. General Provisions**

5 1. All response work performed pursuant to this Order
6 shall be under the direction and supervision of a qualified
7 professional engineer. Within 15 days prior to initiation of any
8 removal work, Respondent shall notify EPA in writing of the name,
9 title, and qualifications of such engineer and of any contractors
10 and/or subcontractors to be used in carrying out the terms of
11 this Order. The qualifications of the persons undertaking the
12 work for Respondent shall be subject to EPA's review, for
13 verification that such persons meet the minimum technical back-
14 ground and experience. If EPA disapproves in writing of the
15 technical qualifications of any person(s), Respondent shall
16 notify EPA within 15 days of the written notice of the identity
17 and qualifications of the replacement(s). If EPA subsequently
18 disapproves of the replacement(s), EPA may, as is its right under
19 CERCLA and the NCP, conduct the removal and seek reimbursement
20 for costs from Respondent.

21 2. All work shall be conducted in accordance with
22 CERCLA, the NCP and EPA Guidance.

23 3. Any deliverables, plans, technical memoranda,
24 reports (other than progress reports), specifications, schedules
25 and attachments required by this Consent Order are, upon approval
26 by EPA, incorporated into this Consent Order. Any non-compliance
27 with such EPA approved reports, plans, specifications, schedules,
28 and attachments shall be considered a failure to achieve the re-

quirements of this Consent Order and may subject the Respondent to the penalties set forth in Section XV.

4. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify EPA within 24 hours of the discovery of the unanticipated or changed circumstances.

5. EPA may determine that additional tasks, including remedial investigatory work, engineering evaluation, and interim response measures or tasks are necessary. Respondent agrees to implement any additional tasks which EPA determines are necessary. Respondent shall complete the additional work in accordance with the standards, specifications, requirements, and schedules determined or approved by EPA.

B. Work and Deliverables

Based upon the Findings of Fact, Conclusions of Law and Determinations made pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and the Respondent having agreed to be bound by the following terms and conditions, it is hereby ORDERED AND AGREED that Respondent implement the following removal measures under the direction of EPA's Project Coordinator.

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit, for EPA comment and approval, a Workplan and Schedule for the development and implementation of an on-Site groundwater removal and treatment system. The Workplan for this removal action shall include:

- a) plans for aquifer pump tests at wells GW-2 and GW-5, as described in the Additional Remedial Investigation Work Plan submitted by Geosystems (July 1989);

1 b) Sampling and Quality Assurance Plans for analysis
2 of samples collected pursuant to the requirements of
3 this Order. All samples taken pursuant to this Order
4 shall be tested for total chromium, hexavalent
5 chromium, trivalent chromium, arsenic, copper, pH, and
6 specific conductance. All sampling and analysis shall
7 be consistent with the "Removal Program Quality
8 Assurance/Quality Control Interim Guidance: Sampling,
9 QA/QC Plan, and Data Validation," EPA OSWER Directive
10 9360.4-01, dated February 2, 1989;

11 c) a description of the design aspects of the proposed
12 groundwater extraction well system, including the
13 maximum groundwater pump rate achievable using the
14 proposed well system;

15 d) a description of the proposed method for the treatment
16 of the extracted groundwater; and

17 e) a description of the proposed method for the discharge
18 or reuse of the treated groundwater.

19 2. Within ten (10) calendar days of receipt of EPA's
20 comments on the Workplan and Schedule, if any comments are made,
21 Respondent shall incorporate EPA's comments and resubmit the
22 Workplan and Schedule for EPA review and comment. If no further
23 changes are needed, EPA shall approve the submitted Workplan and
24 Schedule.

25 3. Within fourteen (14) calendar days of receipt of
26 EPA's approval of the Workplan and Schedule, Respondent shall
27 begin conducting the above-mentioned aquifer pump tests at wells
28 GW-2 and GW-5. Results of these tests shall be submitted for EPA

1 review.

2 4. Within one-hundred and fifty (150) calendar days of
3 receipt of EPA's approval of the Workplan and Schedule, Respon-
4 dent shall commence implementation of the approved groundwater
5 extraction and treatment system. Respondent shall pump
6 groundwater from all extraction wells at the maximum rate pos-
7 sible (as described in the approved Workplan), or as otherwise
8 approved by EPA. Respondent shall continue the removal ac-
9 tivities until termination of this Order as provided in Section
10 XXII of this Order.

11 5. In order to provide data necessary for the removal
12 measures described in subparagraph 6 below, Respondent shall,
13 within thirty (30) calendar days of the effective date of this
14 Order and on a monthly basis thereafter, perform sampling and
15 analysis of the drinking water from downgradient domestic wells.
16 For the same purpose, within thirty (30) calendar days of the ef-
17 fective date of this Order and on a quarterly basis thereafter,
18 Respondent shall sample all other domestic and monitoring wells
19 as marked on Figure 2 in the Additional Remedial Investigation
20 Workplan (July 1989).

21 6. Within thirty (30) calendar days of the effective
22 date of this Order, Respondent shall submit, for EPA comment and
23 approval, plans for interim and long-term provision of alternate
24 water supply for users of neighboring wells which are effected by
25 migration of the contaminant plume. If sampling and analysis of
26 groundwater from neighboring domestic wells reveals concentra-
27 tions of chromium or arsenic in excess of sixty percent (60%) of
28 .05 ppm (the "MCL"), Respondent shall, within fifteen days of

1 receipt of the results, provide an alternate water supply.

2 7. If, at any time during the removal activities,
3 Respondent becomes aware of the need for additional data, Respon-
4 dent shall have an affirmative obligation to submit a memorandum
5 documenting the need for additional data to the EPA Project Coord-
6 inator within 20 days.

7 8. Respondent shall commence any and all work under
8 this Order only after approval of required plans by the EPA
9 Project Coordinator. All plans submitted pursuant to this Order
10 shall be drafted in accordance with all applicable EPA guidances
11 and those directed for use by EPA's Project Coordinator. All
12 Workplans shall include Health and Safety Plans that are consis-
13 tent with EPA Guidance, 29 C.F.R. 1910, and all applicable State
14 and local laws. All such Health and Safety Plans are to be fol-
15 lowed by all personnel in the vicinity of Site work.

16
17 **VI. COMPLIANCE WITH OTHER LAWS**

18 Respondent shall comply with all federal, state and local
19 laws and regulations in carrying out the terms of this Order. Any
20 and all hazardous substances removed from the Site must be
21 handled in accordance with the Resource Conservation and Recovery
22 Act of 1976, 42 U.S.C. §§ 6921, et seq., the regulations promul-
23 gated under that Act, and Section 121(d)(3) of CERCLA, 42 U.S.C.
24 § 9621(d)(3).

25
26 **VII. DESIGNATED PROJECT COORDINATORS**

27 A. EPA has designated a Project Coordinator for the Site
28 who shall have the authorities, duties, and responsibilities

1 vested in the Remedial Project Manager by the National Contin-
2 gency Plan, 40 C.F.R. Part 300, et seq. For the purposes of this
3 Order, EPA's designated Project Coordinator for this Site is:

4 Robert Bornstein
5 United States Environmental Protection Agency, Region 9
6 215 Fremont Street, Mail Code H-7-2
San Francisco, California 94105
(415) 458-6946

7 Respondent shall also designate a Project Coordinator who shall
8 be responsible for overseeing the implementation of this Consent
9 Order. The EPA Project Coordinator will be EPA's designated rep-
10 resentative at the Site. To the maximum extent possible, all
11 oral communication between Respondent and EPA concerning the ac-
12 tivities performed pursuant to this Order shall be directed
13 through the Project Coordinators. All documents, including
14 progress and technical reports, comments, recommendations, ap-
15 provals, disapprovals and other terms and conditions of this Con-
16 sent Order, shall be delivered in accordance with Section VI
17 above.

18 B. EPA and Respondent may change their respective Project
19 Coordinators. Any such changes shall be accomplished by notify-
20 ing the other party in writing at least one week prior to the
21 change.

22 C. Consistent with the provisions of this Consent Order,
23 the EPA Project Coordinator shall also have the authority vested
24 in the On-Scene-Coordinator ("OSC") by the NCP, unless EPA desig-
25 nates a separate individual as OSC, who shall then have such
26 authority. This includes but is not limited to, the authority to
27 halt, modify, conduct, or direct any tasks required by this Con-
28

1 sent Order and/or undertake any response actions (or portions of
2 response action(s)) when conditions present or may present a
3 threat to public health or welfare or the environment as set
4 forth in the NCP.

5 D. The absence of the EPA Project Coordinator from the Site
6 shall not be cause for the stoppage of work.

7

8

VIII. SUBMITTALS

9 A. All submittals and notifications to EPA required by this
10 Order or any approved proposal under this Order shall be made to
11 the Project Coordinator, Robert Bornstein, at the address
12 provided above.

13 B. All approvals and decisions of EPA made regarding the
14 submittals and modifications shall be communicated to Respondent
15 by the Director or his designee. No informal advice, guidance,
16 suggestions, or comments by EPA regarding reports, plans,
17 specifications, schedules, or any other matter will relieve
18 Respondent of its obligation to obtain formal approvals as re-
19 quired by this Order.

20

21

IX. ACCESS

22 A. Respondent shall provide EPA employees and other repre-
23 sentatives with complete access to the facility at all times.
24 Nothing in this Order limits any access rights that EPA or other
25 agencies may have pursuant to law.

26 B. To the extent that Respondent requires access to land
27 other than land it owns or controls, Respondent shall obtain ac-
28 cess agreements from the present owners or lessees within sixty

(60) days of the effective date of this Consent Order. Such agreements shall provide reasonable access for EPA, its contractors and oversight officials, the state and its contractors, and Respondent or its authorized representatives. In the event that Respondent is not able to obtain access to property owned or controlled by persons or entities other than Respondent, Respondent shall immediately notify EPA in writing regarding both the lack of, and efforts made to obtain, such access.

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

A. Respondent shall provide EPA with all information regarding hazardous substance contamination at, or released from, the Site, including but not limited to:

- The results and Quality Assurance/Quality Control (QA/QC) documentation of all sampling and/or tests or other technical data generated by Respondent or on Respondent's behalf with regard to soil, groundwater, surface water or air contamination by hazardous substances, pollutants, or contamination at the Site;

- Previous studies or reports;

- Communications between Respondent and local, state or other federal authorities; and

- Permits from local, state or federal authorities regarding hazardous substance use or contamination at the Site.

B. At the request of EPA, Respondent shall provide to EPA, and/or its authorized representatives, split or duplicate samples collected by Respondents or on Respondent's behalf. Respondent shall notify EPA of any planned sample collection activity in the

1 monthly report preceding the planned activity. Respondent shall
2 notify EPA of any other environmental sampling which it performs
3 at the Site no less than 48 hours in advance of the sampling ac-
4 tivity.

5 C. Respondent shall use the quality assurance, quality con-
6 trol, and chain of custody procedures described in the "EPA NEIC
7 Policies and Procedures Manual," May 1978, revised November 1984,
8 EPA-330/9-78-001-R and "Interim Guidelines and Specifications for
9 Preparing Quality Assurance Project Plans," December 1985,
10 QAMS-005/80, and any EPA updates or revisions to these guidances,
11 while conducting all sample collection and analysis activities
12 required by this Consent Order. Respondent shall consult with
13 EPA in planning for and prior to all sampling and analysis. To
14 provide quality assurance and maintain quality control, Respon-
15 dent shall:

16 1. Use a laboratory which has a documented Quality Assurance
17 Program that complies with EPA guidance document QAMS-005/80;

18 2. Ensure that EPA personnel and/or EPA authorized represen-
19 tatives are allowed access to the laboratory and personnel util-
20 ized by Respondent for analysis.

21 3. Ensure that the laboratory used by Respondent for
22 analysis performs according to a method or methods deemed satis-
23 factory to EPA and submits all protocols to be used for analysis
24 to EPA at least ten (10) days before beginning analysis.

25 D. Respondent shall permit EPA and/or its authorized repre-
26 sentatives to inspect and copy all records, documents and other
27 writings, including all sampling and monitoring data, that in any
28 way concern soil, groundwater, surface water or air contamination

1 at the Site. Nothing in this Consent Order shall be interpreted
2 as limiting EPA's inspection authority under federal law.

3 E. Respondent may assert a confidentiality claim, covering
4 part or all of the information requested by this Consent Order
5 pursuant to 40 C.F.R. § 2.203(b). The Parties agree that
6 analytical data and data covered by Section 104(e)(7)(F) of
7 CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as con-
8 fidential by Respondent and shall be provided to EPA by Respon-
9 dent. Information determined to be confidential by EPA will be
10 afforded the protection specified in 40 C.F.R. Part 2, Subpart B.
11 If no such claim accompanies the information when it is submitted
12 to EPA, it may be made available to the public by EPA without
13 further notice to Respondent.

14 F. All data, factual information, and documents submitted
15 by Respondent to EPA pursuant to this Consent Order shall be sub-
16 ject to public inspection.

17
18 **XI. ENDANGERMENT DURING IMPLEMENTATION**

19 The Director, Hazardous Waste Management Division, EPA
20 Region 9, may determine that acts or circumstances (whether or
21 not related to this Order) may endanger human health, welfare or
22 the environment and may order Respondent to stop further im-
23 plementation of this Order until the endangerment is abated.

24
25 **XII. INDEMNIFICATION**

26 Respondent agrees to indemnify and hold the United States
27 Government, its agencies, departments, agents, contractors and
28 employees harmless from any and all claims or causes of action

arising from or on account of acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, successors, assignees or any other persons, including but not limited to corporations, firms, and contractors, in carrying out activities pursuant to this Consent Order. The United States Government is not a party to any contract entered into by Respondent, nor should any provision in this Consent Order be construed to make the United States Government a party to any contract involving Respondent.

XIII. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of three (3) years after the termination of this Order, a central repository of the records and documents (including computer databases) required to be prepared under this Order. Respondent shall also acquire and retain in this repository copies of all documents that relate to hazardous waste contamination at the Site which are in the possession of its employees, agents, accountants, contractors, or attorneys. After this three year period, Respondent shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA requests that some or all such documents be saved, Respondent shall, at no cost to EPA, provide EPA with the documents or copies of the documents. Respondent shall notify EPA of the address of the depository and shall provide access to EPA at all reasonable times.

1 XIV. DISPUTE RESOLUTION

2 If Respondent objects to any EPA decision regarding the ap-
3 proval or disapproval of submittals, Respondent shall notify EPA
4 in writing of its objections within fourteen (14) calendar days
5 of receipt of the decision. EPA and Respondent will then have an
6 additional fourteen (14) calendar days from the receipt by EPA of
7 the notification of objection to reach agreement. At the end of
8 the fourteen (14) day discussion period, EPA shall provide a
9 written statement of its decision to Respondent. Respondent
10 shall then implement EPA's decision. Use of this dispute resolu-
11 tion provision will not relieve Respondent's duty to complete all
12 other tasks under this Order in a timely manner in accordance
13 with the approved work schedule. This dispute resolution provi-
14 sion or EPA's decision pursuant to this provision does not grant
15 or imply jurisdiction to any court to review EPA's decisions pur-
16 suant to this Consent Order.

17
18 XV. STIPULATED PENALTIES

19 A. Except with respect to any extensions allowed by EPA in
20 writing, or granted pursuant to the provisions of Section XVI
21 (Force Majeure), for each day in which Respondent fails to submit
22 a timely or adequate report or document, or in which Respondent
23 otherwise fails to achieve the requirements of this Order,
24 Respondent agrees to pay the sums set forth below as stipulated
25 penalties. These penalties shall accrue commencing upon the ear-
26 liest of the following occurrences: Respondent's failure to sub-
27 mit a timely or adequate report or document; Respondent's receipt
28 of the written determination of disapproval of a submittal;

Respondent's failure to meet the schedule specified or modified in this Order; or Respondent's receipt of written notice from EPA that a violation of this Consent Order has occurred. The imposition or amount of these penalties are not subject to Dispute Resolution (Section XIV). Dispute Resolution shall not stay the accrual of these stipulated penalties.

B. Stipulated penalties shall accrue in accordance with the following schedule:

1. For the first seven (7) calendar days of violation - \$10,000 per day per violation;
2. For each and every calendar day of violation after the seventh (7th) day of violation - \$25,000 per day per violation.

C. In the event of a late submittal or task, Respondent's payment of stipulated penalties shall be due weekly as they accrue. For all other categories of violations, Respondent's payment of stipulated penalties shall be due upon demand by the Director. All penalties shall be paid by certified check made payable to the United States Treasury and addressed to:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Site by name and make reference to this Consent Order. Respondent shall simultaneously send to the EPA Project Coordinator a notification of any penalty paid, including a photocopy of the check.

D. These stipulated penalty provisions do not preclude EPA

1 from pursuing any other remedies or sanctions which are available
2 to EPA because of Respondent's failure to comply with this Con-
3 sent Order.

4 E. Based on its review of the circumstances surrounding a
5 violation, EPA may, in its sole discretion, waive or reduce pay-
6 ment of accrued penalties.

7
8 **XVI. FORCE MAJEURE**

9 A. If an event occurs which causes delay in the achievement
10 of the requirements of this Consent Order, Respondent shall have
11 the burden of proving that the delay was caused by circumstances
12 entirely beyond the control of Respondent, its contractors or
13 agents and could not be overcome by due diligence. Economic
14 hardship, normal inclement weather, and increased costs of per-
15 formance shall not be considered events beyond the control of
16 Respondent, its contractors and agents and shall not trigger the
17 force majeure clause. In the event of a force majeure, the time
18 for performance of the activity delayed by the force majeure
19 shall be extended for the time period necessitated by the delay
20 attributable to the force majeure. The time period for perfor-
21 mance of any activity dependent on the delayed activity shall be
22 similarly extended, except to the extent that the dependent ac-
23 tivity can be implemented in a shorter time. EPA shall determine
24 whether subsequent requirements are to be delayed, and the time
25 period granted for any delay. Respondent shall adopt all
26 reasonable measures to avoid or minimize any delay caused by a
27 force majeure.

28 B. When an event occurs or has occurred that may delay or

1 prevent the performance of any obligation under this Consent Or-
2 der, which Respondent believes is due to a force majeure, Respon-
3 dent shall notify by telephone the EPA Project Coordinator, or in
4 his/her absence, the Director of the Hazardous Waste Management
5 Division of EPA Region 9, within twenty-four (24) hours of the
6 commencement of such event. Oral notification shall be followed
7 by written notification, made within seven (7) business days of
8 when Respondent knew or should have known of the event causing
9 the delay or anticipated delay. The written notification shall
10 fully describe: the reasons for the delay; the reasons the delay
11 is entirely beyond the control of Respondent, its contractors and
12 agents; the anticipated duration of the delay; actions taken or
13 to be taken to prevent or minimize the delay; a schedule for im-
14 plementation of any measures to be taken to mitigate the effect
15 of the delay; and any aspects of the event which may cause or
16 contribute to an endangerment to public health, welfare or the
17 environment.

18 C. Failure of Respondent to comply with the force majeure
19 notice requirements will be deemed an automatic forfeiture of its
20 right to request a delay.

21 D. If EPA and Respondent cannot agree that any delay in
22 compliance with the requirements of this Consent Order has been
23 or will be caused by circumstances entirely beyond the control of
24 Respondent, its contractors and agents, or on the duration of any
25 delay necessitated by a force majeure event, the dispute shall be
26 resolved according to the Dispute Resolution provisions in Sec-
27 tion XIV. In any such dispute, Respondent shall have the burden
28 of proving by clear and convincing evidence: that the delay was

1 caused by circumstances entirely beyond the control of Respon-
2 dent, its contractors and agents; that reasonable measures were
3 taken to avoid or minimize delay; and the necessity of the dura-
4 tion of the delay.

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XVII. RESERVATION AND WAIVER OF RIGHTS

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A. This Consent Order does not release Respondent from any
8 claim, cause of action or demand in law or equity. EPA reserves
9 the right to take any enforcement action pursuant to CERCLA
10 and/or any other legal authority, including but not limited to
11 the right to seek past and future response costs and injunctive
12 relief. EPA also reserves the right to seek monetary penalties
13 and punitive damages for any civil or criminal violation of law
14 or this Order. The parties agree that Respondent's performance
15 of the work required by this Order does not reduce any liability
16 they may have for past or future response costs incurred by EPA
17 in connection with the Site.

18

B. EPA expressly reserves all rights and defenses that it
19 may have, including EPA's rights to both disapprove of work per-
20 formed by Respondent and to request that Respondent perform tasks
21 in addition to those required by this Consent Order. EPA
22 reserves the right to undertake removal actions and/or remedial
23 actions at any time.

24

C. In entering into this Consent Order, Respondent waives
25 any right to seek reimbursement or present any claim under Sec-
26 tions 106, 111 or 112 of CERCLA, 42 U.S.C. §§ 9606, 9611 or 9612,
27 for any work performed pursuant to this Consent Order and any
28 modifications thereto.

1 D. Nothing in this Order shall constitute or be construed
2 as a release from any claim, cause of action or demand in law or
3 equity against a person, firm, partnership, subsidiary or cor-
4 poration not a signatory to this Order for any liability it may
5 have arising out of or relating in any way to the Facility.
6

7 **XVIII. REIMBURSEMENT OF COSTS**

8 Within one year of termination of this Order, EPA will sub-
9 mit to Respondent documentation for all response and oversight
10 costs incurred by the U.S. Government with respect to this Con-
11 sent Order. EPA's Agency Financial Management System summary
12 data (SPUR Reports) shall serve as the documentation for payment
13 demands. EPA will also provide a summary accounting of its in-
14 direct and interest cost calculations. Respondent shall, within
15 thirty (30) calendar days of receipt of the accounting, remit a
16 check for the full amount of those costs payable to the Hazardous
17 Substance Response Trust Fund. Respondent shall send a cover
18 letter with the check. The letter shall identify the Facility by
19 name, EPA Identification Number (Valley Wood Preserving, Inc.,
20 Site Identification # 9TGB09K6K5), and make reference to this Or-
21 der.

22 The check with the accompanying letter should be addressed
23 to:

24 U.S. Environmental Protection Agency - Region 9
25 ATTN: Superfund Accounting
26 P.O. Box 360863M
Pittsburgh, PA 15251

27 A copy of the transmittal letter and check shall be sent
28 simultaneously to the EPA Project Coordinator. EPA reserves the

1 right to bring action against Respondent pursuant to Section 107
2 of CERCLA, 42 U.S.C. § 9607, for recovery of all response and
3 oversight costs incurred by the United States related to this
4 Consent Order and not reimbursed by Respondent, as well as any
5 other unreimbursed past and future costs incurred by the United
6 States in connection with response activities conducted at this
7 Site.

8
9 **XIX. PARTIES BOUND**

10 A. This Order shall apply to and be binding upon Respon-
11 dent, its agents, employees, successors, and assigns. No change
12 in ownership or corporate or partnership status will alter
13 Respondent's obligations under this Consent Order. Respondent
14 shall provide a copy of this Consent Order to any subsequent
15 owner(s) or successor(s) before ownership rights are transferred.

16 B. Respondents shall provide a copy of this Order to all
17 contractors, subcontractors, laboratories and consultants
18 retained to conduct any portion of the work required by this Or-
19 der, within five (5) days of retaining any such contractor, sub-
20 contractor, laboratory or consultant or within five (5) days of
21 the effective date of this Order, whichever is later. Not-
22 withstanding the terms of any contract, Respondent is responsible
23 for compliance with this Order and for ensuring that its contrac-
24 tors and agents comply with this Order.

25 C. The signatories to this Order certify that they are
26 authorized to execute and legally bind the parties they represent
27 to this Order.

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XX. NOTICE TO STATE

Notice of the issuance of this Order has been given to the State of California.

XXI. EFFECTIVE DATE

EPA and Respondent agree that this Consent Order is effective on the date on which Respondent receives the fully executed Order. In light of the prior communications between EPA and Respondent concerning the terms of this Order, Respondent agrees that there is no need for a settlement conference prior to the effective date of this Order.

XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed.

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3 IT IS SO AGREED AND ORDERED:
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5 UNITED STATES
6 ENVIRONMENTAL PROTECTION AGENCY

7 By: *[Signature]* Date: 12-11-89
8 *Jeff Zelikson*
9 Director,
Hazardous Waste Management Division
Region IX

10
11 RESPONDENT

12 *Healey Wood Preserving Inc.*
13 By: *Harold W. Kogut President* Date: Dec 5, 1989
14

15
16 Contacts:

17 Gavin McCabe
18 Office of Regional Counsel
19 U.S. Environmental Protection Agency
20 215 Fremont Street
San Francisco, CA 94105
(415) 744-1080

21 Robert E. Bornstein
22 Superfund Enforcement Branch, T-4-4
23 U.S. Environmental Protection Agency
24 215 Fremont Street
San Francisco, CA 94105
(415) 458-6946

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